

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

\* \* \*

MARY ANN SUSSEX, et al.,

Plaintiffs,

v.

TURNBERRY/MGM GRAND TOWERS,  
LLC, et al.,

Defendants.

Case No. 2:08-cv-00773-MMD-PAL

ORDER

(Def' Motion to Refer Claims  
– dkt. no. 191)

**I. SUMMARY**

This case is stayed pending arbitration. Before the Court is Defendant Turnberry/MGM GrandTowers, LLC's ("Turnberry/MGM") Motion to Refer All Claims and Causes of Action to the Bankruptcy Court ("Motion"). (Dkt. no. 191.) Plaintiffs have opposed (dkt. no. 195) and Defendant has replied (dkt. no. 196). For the reasons discussed below, the Motion is granted.

**II. BACKGROUND**

This matter arises from a long-standing dispute brought by purchasers of condominium units developed and sold by Turnberry/MGM. The factual background of this case is summarized in the Court's March 2, 2010, Order. (Dkt. no. 64.) The Court will recite the procedural history that is pertinent to the Motion.

On June 16, 2009, the Court compelled Plaintiffs to arbitrate their claims in response to Defendants' motion. (Dkt no. 59.) As a result, there were several arbitration procedures that occurred until the latest stay. They involve plaintiffs in a consolidated

1 state court proceeding (“*KJH*” or “State Court Action”) and plaintiffs in the federal  
 2 proceedings.<sup>1</sup> The American Arbitration Association (“AAA”) appointed Arbitrator  
 3 Brendan Hare as arbitrator in the *Sussex* arbitration on February 26, 2010. On  
 4 December 31, 2012, Arbitrator Hare consolidated all of the arbitrations proceeding  
 5 against Turnberry/MGM for the purposes of coordinated discovery, motion practice and  
 6 ruling on common issues. (Dkt. no. 114-5, Appendix Vol. 1 at TMGM 166.)

7 On August 9, 2013, the Court stayed this action pending arbitration.<sup>2</sup> (Dkt. no.  
 8 113.) On September 11, 2013, Defendants filed a motion to disqualify Arbitrator Hare  
 9 from the arbitration proceedings in this case and in the *Abraham* case. (See dkt. no. 114  
 10 in *Sussex*; dkt. no. 61 in *Abraham*.) The Court granted the motion and disqualified  
 11 Arbitrator Hare. (Dkt. no. 141.) The Ninth Circuit Court of Appeals granted Plaintiff’s  
 12 petition for a writ of mandamus directing this Court to vacate its order removing Arbitrator  
 13 Hare. (Dkt. no. 171.) On April 8, 2015, the Court vacated its order and reinstated  
 14 Arbitrator Hare. (Dkt. no. 175.)

15 About two months later, on June 30, 2015, Turnberry/MGM filed a notice of  
 16 pending bankruptcy, informing the Court that it commenced a bankruptcy proceeding  
 17 under Chapter 11 of Title 11 of the United States Code (“Bankruptcy Case”). (Dkt. no.  
 18 180.) Turnberry/MGM now moves to refer this case to the Bankruptcy Court.

19 The Court held a status conference on January 19, 2016, to obtain an update on  
 20 recent developments in the Bankruptcy Case that may affect the arbitration and two

21 ///

---

22 <sup>1</sup>The federal proceedings include the instant case, *Sussex v. Turnberry/MGM*  
 23 *Grand Towers, LLC, et al.* (2:08-cv-00773) (“*Sussex*”) and *Abraham et al v.*  
 24 *Turnberry/MGM Grand Towers, LLC et al*, (2:11-cv-01007) (“*Abraham*”). The Court  
 25 consolidated these actions under 2:08-cv-00773. (Dkt. no. 127.) Plaintiffs represent that  
 they have moved for an order to lift stay to permit them to proceed against non-debtor  
 defendants in the *Sussex* arbitration. (Dkt. no. 195 at 4 n. 1.)

26 <sup>2</sup>Turnberry/MGM suggests that despite the stay, this case remains active. (Dkt.  
 27 no. 196 at 5.) However, Defendants filed a majority of the motions since the Court  
 28 imposed the stay. (See, e.g., dkt. nos. 114, 124, 177.) It is disingenuous for  
 Turnberry/MGM to ask this Court to intervene in the arbitration proceedings and then cite  
 to their own motions and the Court’s resolution of those motions as evidence that the  
 stay is effectively meaningless.

1 motions pending before this Court.<sup>3</sup> (Dkt. no. 202.) The parties filed status reports in  
2 advance of the conference. (Dkt. nos. 204, 205.)

### 3 **III. DISCUSSION**

4 Turnberry/MGM argues that referral to the Bankruptcy Court should have been  
5 automatic under Local Rules of Bankruptcy Practice of this Court because the  
6 Bankruptcy Court has original jurisdiction and because the claims in this case are “core”  
7 claims or are “related to” the Bankruptcy Case. (Dkt. no. 191 at 5-6.) It argues that at a  
8 minimum, the case should be referred to allow the Bankruptcy Court to determine  
9 whether this case involves “core” claims because such determination is within the  
10 Bankruptcy Court’s exclusive jurisdiction. (*Id.*) The Court agrees that this case should be  
11 referred, but disagrees with Turnberry/MGM’s reasoning.

12 District courts have “original and exclusive jurisdiction over all cases under title  
13 11.” 28 U.S.C. § 1334(a). District courts also “have original but not exclusive jurisdiction  
14 of all civil proceedings arising under title 11, or arising in or related to cases under title  
15 11.” 28 U.S.C. § 1334(b). District courts may refer three types of cases to bankruptcy  
16 courts in their own district: those (1) “arising under title 11,” (2) “arising in” a title 11 case,  
17 and (3) “related to a case under title 11.” 28 U.S.C. § 157(a). The District of Nevada  
18 adopted LR 1001(b) to effectuate the referral of these proceedings to the bankruptcy  
19 court. LR 1001(b) does not, as Turnberry/MGM contends, mandate automatic referral of  
20 cases, such as this case, that have been pending in the district court to the bankruptcy  
21 court upon the initiation of a bankruptcy proceeding.

22 Turnberry/MGM next argues that the Bankruptcy Court has “original jurisdiction”  
23 over this action because, at a minimum, the Bankruptcy Court has “exclusive jurisdiction”  
24 to determine whether claims are “core” claims. (Dkt. no. 191 at 5-6.) Turnberry/MGM has  
25 it backward. It is the district courts, not the bankruptcy courts, that have “original and  
26

---

27 <sup>3</sup>In addition to the Motion, Defendants MGM Resorts International and MGM  
28 Grand Hotel, LLC have filed a Motion for Determination of Non-Arbitrability of Claims  
Against Non-Signatory Defendants. (Dkt. no. 177.)

1 exclusive jurisdiction over all cases under title 11” and may refer certain types of cases  
2 to the bankruptcy courts. 28 U.S.C. § 1334(a); 28 U.S.C. § 157(a). As the Supreme  
3 Court recently explained, the Federal Judgeship Act of 1984 Act, 28 U.S.C. § 151 et.  
4 seq., divided “all matters that may be referred to the bankruptcy court into two  
5 categories: ‘core’ and ‘non-core’ proceedings.” *Executive Benefits Insurance Agency v.*  
6 *Arkison*, 134 S.Ct. 2165, 2171 (2014). A bankruptcy court’s statutory authority to enter  
7 judgment in a particular proceeding depends on whether that proceeding is a “core  
8 proceeding[ ]” under 28 U.S.C. § 157(b)(1).<sup>4</sup> *Id.* at § 157(c); *Executive Benefits*, 134  
9 S.Ct. at 2172. § 157 authorizes a bankruptcy court to adjudicate a claim in “core  
10 proceedings” to final judgment, and to hear a non-core claim “that is otherwise related to  
11 a case under title 11” but may not enter final judgment on such a matter absent consent  
12 of all the parties. *Id.* at § 157(c); *Executive Benefits*, 134 S.Ct. at 2172 (“If a matter is  
13 non-core, and the parties have not consented to final adjudication by the bankruptcy  
14 court, the bankruptcy judge must propose findings of fact and conclusions of law.”).  
15 Thus, the Court has jurisdiction over this case regardless of whether the claims in this  
16 case are “core” claims or are “related to” the Bankruptcy Case. However, as the  
17 Supreme Court in *Executive Benefits* further noted, the bankruptcy court may “determine  
18 whether each claim before it is core or non-core.” *Executive Benefits*, 134 S.Ct. at 2171  
19 (citing 28 U.S.C. § 157(b)(3)). In fact, this Court has found it proper to permit the  
20 bankruptcy court to determine whether claims are core, non-core or *Stern* claims and  
21 make final judgment or recommendations accordingly. See *In re Access Ins. Services,*  
22 *Inc.*, No. 3:13-cv-00699-MMD (D.Nev. Nov. 11, 2014) (denying motion to withdraw  
23 reference).

24 ///

25 ///

---

26 <sup>4</sup>However, in *Stern v. Marshal*, U.S. 131 S.Ct. 2594 (2011), the Supreme Court  
27 held that the bankruptcy court may not enter final judgment on certain core proceedings.  
28 For those *Stern* claims, the bankruptcy court has authority to enter findings of facts and  
conclusions of law to the district court for *de novo* review. *Executive Benefits*, 134 S.Ct.  
at 2173.

1 Here, the Bankruptcy Court has found the claims in the removed State Court  
2 Action to be “core proceedings” or are “related to” the Bankruptcy Case and are  
3 appropriate for referral under LR 1001(b).<sup>5</sup> (Dkt. no. 204 at 4; dkt. no. 205 at 2.) The  
4 parties do not dispute that those claims are essentially the same as the claims asserted  
5 in this case. The Bankruptcy Court’s ruling further buttresses Turnberry/MGM’s  
6 arguments that referral would promote efficient use of judicial resources and uniformity  
7 of bankruptcy administration. The Court is therefore persuaded that this case should be  
8 referred to the Bankruptcy Court and will grant the Motion.

9 **IV. CONCLUSION**


10 The Court notes that the parties made several arguments and cited to several  
11 cases not discussed above. The Court has reviewed these arguments and cases and  
12 determines that they do not warrant discussion as they do not affect the outcome of the  
13 Motion.

14 It is therefore ordered that Turnberry/MGM GrandTowers, LLC’s Motion to Refer  
15 All Claims and Causes of Action to the Bankruptcy Court (dkt. no. 191) is granted. This  
16 case is referred to the Bankruptcy Court (in case no. 15-13706-abl).

17 It is further ordered that Defendants MGM Resorts International and MGM Grand  
18 Hotel, LLC’s Motion for Determination of Non-Arbitrability of Claims Against Non-  
19 Signatory Defendants (dkt. no. 177) is denied without prejudice since the Court finds it  
20 appropriate for the Bankruptcy Court to address this motion.

21 The Clerk is directed to effectuate this referral order and close this case.

22 Dated this 19<sup>th</sup> day of January, 2015.

23  
24   
25 \_\_\_\_\_  
26 MIRANDA M. DU  
27 UNITED STATES DISTRICT JUDGE

28 <sup>5</sup>Plaintiffs have appealed the Bankruptcy Court’s ruling. (Dkt. no. 205 at 2.)